E. ROBERT SEAVER, CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71 - 972

VIRGIL E. COCHRAN,

Petitioner

vs.

ROBERT G. COSTILL, et al.,

Respondents.

MOTION TO DISMISS OR AFFIRM

Appellees and each of them move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Ohio on the ground that it is manifest, as is demonstrated by the record, that the questions on which the decision of the cause depends are so unsubstantial as not to need or require further argument.

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I.

THE NATURE OF THE CASE

Petitioner, a builder, undertook to construct a two-room addition on Respondents' home. Argument ensued over the quality of his workmanship. [redacted] Petitioner sued in Municipal Court for one-half the contract price.

The action was dismissed together with Respondents' Counter - Claim.

Petitioner refiled in the same court, naming the same pa and praying for re-instatement of the first cause plus damages. Court, on Respondents' Motion, consolidated both and awarded pet his damages. The full amount was paid including costs.

Petitioner moved then into the state trial courts with virtu the same action. Respondents prevailed on motion for summary j ment. Held: Res judicata. This was affirmed on appeal. Th reme Court of Ohio overruled motions to certify and for rehearing

II.

The Case Presents No Substantial Ques - tion Not Previously Decided by This Court

Petitioner bottoms his appeal in essence on a claimed deni due process.

> Law, in its regular course of administration through courts of justice, is due process, and when secured by the law of the state, the constitutional prerequisite is satisfied.
>
> The mere fact that a person is unsuccessful in a Court in a matter involving life, liberty, or property does not show that there has been a violation of the due process of law guaranteed. Sexton v. Barry, 233 F 2d 220, 1 Ohio Ops 2d 231, 75 Ohio

III.

CONCLUSION

WHEREFORE, Respondents, appellees herein, respectfully submit that the questions upon which this cause depend are so substantial as not to need further argument, and said appellees and each of them respectfully move the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Ohio.

Respectfully submitted,

JOHN D. SMITH
Counsel for Appellees

PROOF OF SERVICE

A copy of the foregoing Motion to Dismiss or Affirm was mailed this _____ day of February, 1972, to Petitioner, Mr. Virgil E. Cochran, via regular mail addressed to his residence at 3720 Alberta Drive, Norton, Ohio, with sufficient postage affixed thereto.